

T³: Trustee Training Tips

Number 2 Volume 1

Kentucky Department for Libraries & Archives

Spring 2001

PUT IT ON A BUMPER STICKER

Fans of novelist Kinky Friedman will recognize this phrase as his admonishment to be brief, to say whatever in six words or less. When asked just what a public library trustee does, you can put it on a bumper sticker that looks like this:

Trustees Advocate, Plan, & Manage Risk

These components of the trustee job description are in ascending order of importance, which is not to say advocating for libraries is unimportant. After all, it made this very short list of trustee duties. Planning, too, is an essential function of each library board. But not doing either of these highly desirable tasks is not as likely to spell ruin for your library as failing to manage risk.

Just how does a board manage risk? One key element is the proper oversight of the library's finances. This includes making sure the expenditures are consistent with the library's mission, carefully monitoring the monthly financial reports, and conducting audits at least as often as required by law. A second critical component is establishing appropriate employment policies and ensuring the library follows them. And while the board should not be involved in routine personnel management, it should insist that all employees have a copy of (or have access to) the personnel handbook or staff manual.

Risk financing is the process of establishing the financial means to pay for accidents and losses. It may not be wise to rest solely on the general liability insurance policy. While you may be protected for most acts of good faith on behalf of the library, violations of employment law, for example, or refusing to fix safety violations, leave board and individual members with no protection. Library boards may wish to consider purchasing Directors and Officers (D&O) liability insurance. This protects the personal assets of the individual trustees, protects the assets of the library, and should be a selling point in recruiting and retaining good members. Remember that anybody can sue anyone at anytime for anything! And even though they may not win, being "not guilty" still won't protect you and your library from legal defense expenses, bad publicity, and significant stress and turmoil.

Overall risk management demands the board manage its own affairs properly. Don't rely solely on yourselves. Seek expert help when you need it—especially on legal and insurance matters.

ISSUES FOR BOARDS

One big surprise for most trustees upon starting their career as a board member is the number of laws and regulations they are expected to follow. Fortunately, the Trustee Manual highlights the most common and essential statutes and offers advice on how both a board and an individual trustee may lessen his/her liability.

Continuing with the subject of page one, managing risk, it would behoove most libraries to ask their insurance agent to tour the facility(ies) and point out what might be done to limit potential liabilities. Your agent is as anxious as you to control loss and should be most willing to perform such an audit.

Do groups using your community meeting room have their own liability insurance? It is perfectly reasonable to require that they do, especially if your room is used after hours. Depending upon the specific situation, the group's insurance *may* provide the front line protection rather than the library's policy. This can be a complicated issue and needs to be discussed with your agent and with community good will in mind as well.

Some library boards feel content with liability coverage provided by each individual's homeowner policy. This is not a good option, though it is slightly better than no coverage at all. Assume for a moment that your board is being sued. It is highly unlikely that all members of a given library board will insure through the same company and/or agent. Relying upon each trustee's individual homeowner's coverage means lawyers multiplied times the number of different policies! The legal quagmire that would ensue is one no one wants to imagine. Plus using your own policy *is* dipping into your own assets. Finally, there is also the issue of limiting your trustee pool only to those that are homeowners.

Another insurance matter that needs to be addressed is whether or not your current policy has a sexual molestation exclusion. Surprisingly, many do. It might be wise to make sure yours doesn't – and to pick up that coverage if desired. Remember you're responsible for what happens in the library's parking lot as well as in the building.

Most claims against libraries are employment or personnel related. Since 1991 jury trials and punitive damages have been allowed, upping the ante considerably for disgruntled employees seeking compensation for wrongs or perceived wrongs.

Does your library conduct criminal checks when hiring new personnel? Many do for those employees who will be working with children or with significant access to the library's funds. Non-profits like *Meals on Wheels* are being advised to do so to protect themselves for liabilities claimed against staff that go into the homes of elderly clients unsupervised. It is easy to see that this logic can apply to bookmobile service that does much the same thing. It is important that if it is done for one potential job candidate that it be done for all. Such checks should never be done in secret, but explained to each person ahead of time. Obviously only those job candidates that are serious contenders for the job, those in post-interview status, need to be checked.

Diligence on the part of trustees is imperative. Read the reports provided to you by the library and question everything you don't understand. Keep questioning until you do know what you're being asked to approve. It is also recommended that you question some things you do understand occasionally as a double check. Trustees can be held liable for rubberstamping, so it's not a desirable habit. You are supposed to know what you're doing. No, you don't want to micro-manage, but neither do you want to ignore your responsibilities.

DO YOU NEED D&O ANYWAY?

Maybe, maybe not. This is a decision each library board must make for itself. The purpose of this edition of *T³: Trustee Training Tips* is not to alarm trustees or librarians, but to introduce a topic that deserves serious consideration. Some boards opt not to cover themselves. Your editor is personally aware of one library board whose makeup includes an attorney, and it is he who speaks passionately against such coverage. It is his contention that their small budget cannot afford it and that “if we keep our noses clean, we’ll be OK.” It is only fair, however, to add that this area of law is not his specialty.

Forgoing coverage means the board must fully recognize its responsibilities and treat them with the seriousness they deserve. Just because the public library is a non-profit organization doesn’t mean its board can abandon a business approach to its governance. It is the board members’ legal and moral duty to use the same degree of commitment, attention, and care as each would in his/her own business or career.

To spend a significant amount of the library’s budget on a D&O policy is something each and every library board must decide for itself. If you choose not to, then make that decision after thoughtful discussion with the board as a whole. Revisit the issue every few years, as the makeup of any given board will change and its priorities may change as well.

Are you likely to be sued? No, of course not. If you manage your risk sensibly, the odds are probably only a little better than winning the lottery. But remember the lottery ads tell us “somebody’s got to win and it might as well be you.” Let’s hope it’s not you that wins the litigation lottery.

WHO SHOULD BE COVERED?

If the library board opts to purchase directors and officers liability insurance, obviously they will provide coverage for themselves as trustees. It might not be wise, however, to stop there. If the library has an advisory board, then they too should be considered for coverage in this policy. While it is only the “real” library board that can make decisions about the governance of the organization, there is the potential for advisory board members to be named in litigation as well. After all, the whole purpose of such a board is to advise the voting board, thereby influencing their policy-making decisions. While it is highly unlikely that advisory board members would ever be held accountable for an action taken by the voting board, remember that doesn’t protect them from being sued.

So, just who should be covered by the library’s policy? Anyone who makes policy, influences policy, or carries out policy is potentially in a position to need coverage. This is a decision to discuss with your insurance agent.

T³: Trustee Training Tips is published quarterly by the Field Services Division of the Kentucky Department for Libraries and Archives. Correspondence should be addressed to the editor, Nelda Moore, at Lincoln Trail Regional Office, 201 West Dixie Avenue, Elizabethtown 42701-1533. Phone 270.766.5222; Fax 270.766.5223; e-mail: Nelda.Moore@kdla.net.

Serving Kentucky’s Need to Know



An agency of the Education, Arts & Humanities Cabinet

LIBRARY LETTERS

Dear Marian Librarian,

After reading about our potential liability, our board invited our insurance agent to come talk to us. We all agreed after she left that we didn't feel comfortable with his grasp of the subject. What should we do now?

-- Troubled Trustee

Dear Troubled,

We suspect you are not alone. Just as attorneys and doctors have areas of specialty, so do insurance agents. It is important to determine if your agent has expertise in D&O—and don't be surprised if she doesn't. Many agents lack significant knowledge in this area since they don't deal with it often. If yours doesn't, ask her to bring in a representative from one of their D&O insurance carriers with the expertise to talk to your board.

HOW MUCH DO YOU KNOW?

The following quiz will let you test your knowledge on the topics covered in this publication. The answers are under "Publications" on KDLA's web page <www.kdla.net>.

1. What does a Directors and Officers Liability policy cover?
2. Are we liable for something that happens at a meeting in our community room after hours? Lots of groups, from AA to AARP, use our room at night.
3. I never thought about nice organizations like the public library being sued. What are the usual reasons they are?
4. Who can tell us if we need D&O coverage?
5. Now I'm scared. How can I lessen my potential liability?

**Kentucky Department for Libraries
and Archives
201 West Dixie Avenue
Elizabethtown KY 42701-1533**

ADDRESS CORRECTION REQUESTED
PLEASE FORWARD

ANSWERS TO T³ QUIZ:

1. What does a Directors and Officers Liability policy cover? [pg 1]

A D&O policy protects the personal assets of each trustee and the assets of the library itself. This means, should you be sued as a board or as an individual on the board (or both ways at the same time) you should have protection up to the amount of the policy coverage.

2. Are we liable for something that happens at a meeting in our community room after hours? Lots of groups, from AA to AARP, use our room at night. [pg 2]

It depends upon a lot of factors—one important one being whether or not the group has its own liability insurance. Simply because they do would not automatically shift responsibility. There would need to be some kind of contractual agreement in place that would specify coverage requirements. Liability for the physical premises (tripping caused by rips in the carpet, for example) still falls to the library. Security issues are another element to consider.

3. I never thought about nice organizations like the public library being sued. What are the usual reasons they are? [pg 2]

*Even nice people get sued! Public libraries are most often sued by disgruntled employees. Up until a few years ago these were heard by a judge, but not they get jury trials and punitive damages are awarded—making a far more serious financial impact. Having good personnel policies **and** following them is imperative. Informing staff of these policies is also essential. Failure to do so leaves the board and the individual trustees open to all manner of potential employment practices suits.*

4. Who can tell us if we need D&O coverage? [pg 3]

This is a decision each board must make for itself, but only after careful consideration. Asking your insurance agent to explain the D&O policy he can provide is a good first step. Just remember, not all agents are experts in this kind of insurance and it would be in everyone's best interests to ask him up front about his level of knowledge in this area. If he isn't well versed in it, he can bring someone from his agency or their D&O carrier to talk to you. Don't hesitate to ask.

5. Now I'm scared. How can I lessen my potential liability? [throughout]

First of all, don't be scared. Do be careful, however. Read your Kentucky Public Library Trustee Manual, pages 4 and 5. Be diligent as a trustee. Know what your voting to do and just as importantly, not to do. Inaction can be just as dangerous as inappropriate action. Don't fall into the habit of rubberstamping everything your director gives you. Read those reports. Ask questions. Ask questions about things you don't understand. Keep asking questions until you do understand. As questions about thing you've always understood, just as a double check to determine that you are getting full and complete answers. Make sure your director or personnel manager is following all employment laws. Ask your regional librarian if he or she is aware of anything you need to know that you probably don't. Does your board, or maybe all the boards in your region, need a workshop on employment law and regulations? Would you go if one were provided? And, far from last, ask your insurance agent to talk to your board, including a tour of your facility.